

G-002/C-89-47DISMISSING COMPLAINT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Complaint Against
Northern States Power Company by Fusion
Coatings, Inc.

ISSUE DATE: August 10, 1989

DOCKET NO. G-002/C-89-47

ORDER DISMISSING COMPLAINT

PROCEDURAL HISTORY

On January 26, 1989 Fusion Coatings, Inc. (Fusion Coatings or the company) filed a complaint under Minn. Stat. §§ 216.14 et seq., alleging that Northern States Power Company (NSP) had overcharged the company for natural gas service by applying the wrong rate schedule during a period from April 16, 1985 through May 16, 1988. On February 1, 1989 the Commission issued its ORDER TO RESPOND TO COMPLAINT OR TO GRANT THE RELIEF IT REQUESTS. On February 15, 1989 NSP filed an answer denying the allegations of the Complaint.

The Department of Public Service (the Department) intervened in the matter and recommended further factual development and legal argument on two issues: 1. whether NSP knew or should have known during the period in question that the company was eligible for service at a lower rate schedule; and 2. whether NSP had a legal duty to inform the company of its eligibility for a lower rate schedule. The Commission issued an Order requiring further filings on these issues on May 1, 1989.

These filings were duly submitted, and the matter came before the Commission again on July 18, 1989.

FINDINGS AND CONCLUSIONS

Findings of Fact

Fusion Coatings began receiving gas service from NSP in 1977 under a contract titled "Interruptible Gas Service Agreement." The contract required NSP to provide up to 72,000 cubic feet of natural

gas per day, well within the usage levels defining the Small Volume Interruptible service class. At that time, however, commodity rates for Small Volume Interruptible (SVI) and Large Volume Interruptible (LVI) customers were identical. The rate schedule attached to the contract therefore showed the commodity rate as both an LVI and SVI rate. Later, when LVI rates became lower than SVI rates, NSP sent Fusion Coatings new rate schedules, showing SVI rates, to attach to the contract in place of the original rate schedule.

Between 1977 and the present, Fusion Coatings increased its overall usage levels. The company's records indicate that on several occasions between April 1985 and May 1988 its daily usage exceeded the 199 MCF eligibility threshold for LVI service. The company did not, however, inform NSP or renegotiate its contract to reflect higher usage levels. NSP had no knowledge that Fusion Coatings' daily usage ever exceeded the 199 MCF LVI threshold. Since the company exceeded the threshold on only a few occasions during the three year period, only daily meter reading, its functional equivalent, or customer notification would have apprised NSP of the situation.

Fusion Coatings became an LVI customer in May 1988. The company became aware of its eligibility for LVI rates in discussions with NSP regarding natural gas service for its new plant. As an LVI customer Fusion Coatings is subject to different conditions of service than SVI customers, chiefly more frequent service curtailments.

Conclusions of Law

The Commission finds that the facts alleged by Fusion Coatings would not support its claim for relief even if proven true. Under the facts alleged, NSP did not have a duty to recognize Fusion Coatings' eligibility for LVI service and to inform the company of such eligibility.

NSP's Duty Under the Contract -- The Commission does not agree that the 1977 contract can be reasonably construed as requiring NSP to provide whatever form of interruptible service is most advantageous for Fusion Coatings at any given time. First of all, even when the contract was executed, LVI and SVI had different customer service charges and different terms and conditions of service. The difference between LVI and SVI service has never been solely a matter of money. LVI customers, for example, have always been subject to more frequent curtailments than SVI customers. It is unreasonable to assume that either party believed Fusion Coatings was delegating to NSP the power to determine which form of service the company would receive. Furthermore, the company concedes that rate schedules received after the initial one invariably identified the company's service as Small Volume Interruptible Service, putting the company on notice that it was an SVI customer.

Similarly, it is not reasonable to conclude from the heading, "Interruptible Gas Service Agreement," and the initial rate schedule giving identical LVI and SVI commodity rates, that the parties expected NSP to assume responsibility for monitoring the company's gas usage and ensuring it was receiving service under the rate schedule most appropriate to its needs. Under this construction of the contract, NSP would have been obligated to monitor Fusion Coatings' usage, begin daily meter readings when usage levels suggested possible LVI eligibility, and place Fusion Coatings on the LVI

rate schedule when the company qualified. The contract was not a model of clarity, but it does not support the conclusion that the parties intended NSP to assume the far-reaching responsibilities outlined above.

NSP's Duty Under Applicable Rules and Tariffs -- Commission rules do place some responsibility on utilities to help customers identify the most economical form of service for which they may qualify:

When a customer is eligible to take service under more than one rate, the utility shall advise the customer in the selection of rate or rates which in its judgment result in the lowest cost of projected consumption, based on twelve months' service and on the information at hand. Each utility shall, at the time of any change in the applicable rate schedule, deliver to each customer the schedule of rates applicable to his or her type of service.

Minn. Rules, part 7820.3200.

Similarly, NSP's tariffs require the company to work with customers to determine which rate schedule best meets their needs:

Where more than one rate schedule is available for the same class of service, . . . the Company will assist the customers in making their selection of the rate schedule or schedules which will result in the lowest cost for estimated consumption, based on twelve (12) months' service and on the information at hand.

NSP's Minnesota Gas General Rules and Regulations, Section 2.3.

The Commission rule and the tariff clearly require utilities to analyze customers' needs and service options when they first apply for service. They also require utility cooperation when customers request assistance in re-examining their existing service arrangements. They may even apply when the utility knows that a customer is taking service under a rate schedule which does not provide the most economical service.

The Commission does not believe, however, that its rules, NSP's tariff, or other legal authority requires utilities to monitor customers' usage levels with the degree of detail which would have been necessary for NSP to know that Fusion Coatings qualified for Large Volume Interruptible Service. The company itself states that its usage exceeded the LVI threshold on only a handful of occasions over the course of three years. It has exceeded the threshold only three times in the past year. Daily meter reading, or its equivalent, would have been necessary for NSP to detect the company's LVI eligibility.

NSP had no obligation to go to such lengths to ensure that Fusion Coatings received the most economical form of service to which it was entitled. Neither did NSP have an obligation to act in an ongoing advisory capacity in energy matters, other than complying with Commission rules and Orders and with its own tariffs. Fusion Coatings has not alleged that NSP's conduct violated any

rules or tariffs other than those cited, and has alleged the violation of no Commission Order. The Commission concludes that NSP did not fail to discharge any legal obligation to Fusion Coatings.

ORDER

1. The Complaint of Fusion Coatings, Inc. against Northern States Power Company is dismissed for failure to state a claim upon which relief can be granted.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

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